SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Queensland v Cogdale* [2020] QSC 259
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** **V** **DAVID LEONARD COGDALE**
FILE NO/S:	BS No 3514 of 2020
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	Monday 8 June 2020, *ex tempore*
DELIVERED AT:	Brisbane
HEARING DATE:	Monday 8 June 2020
JUDGE:	Callaghan J
ORDER:	**1. Pursuant to Part 2 Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003, David Leonard Cogdale is a serious danger to the community.** **2. The respondent be released from custody and be subject to the requirements of the supervision order which is attached as Schedule A to these reasons for a period of 10 years until 7 July 2030.**
CATCHWORDS:	CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where the applicant seeks, under the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld), to detain the respondent in custody for an indefinite term, for care, control or treatment – where the applicant, in the alternative, seeks for the respondent to be released from custody subject to a supervision order – where the respondent submits that he

should be released from custody subject to a supervision order – where evidence of psychiatrists is that individual treatment of respondent can be done effectively in the community rather than in a custodial setting – whether the respondent's release from custody on a supervision order would provide adequate protection to the community against the commission of a serious sexual offence

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)

Attorney-General for the State of Queensland v Francis [2006] QCA 324, cited
R v Free; Ex parte Attorney-General (Qld) [2020] QCA 58, cited

COUNSEL: B Mumford for the applicant
TR Morgans for the respondent

SOLICITORS: Crown Law for the applicant
Fisher Dore for the respondent

[1] The Attorney-General brings this application pursuant to Part 2 Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 ("the Act"). By it she seeks to detain the respondent, Mr Cogdale, in custody, for an indefinite term, for care, control or treatment. Or, alternatively, the Attorney seeks for the respondent to be released from custody subject to numerous conditions which are contained in an order that has been drafted and placed before me.

[2] The 53 year old respondent is currently serving a sentence which will soon conclude. If an order is not made, he would be released on the 8th of July this year. I doubt that it would actually be necessary to have regard to any of the reports that have been placed before me on this application, in order to be concerned about the prospect of the respondent's release.

[3] The applicant correctly describes his criminal history as lengthy and concerning. Bare details of some offending committed in 2003 are recorded in *R v Cogdale* [2004] QCA 129. For that offence, he was sentenced to five years imprisonment, although that case was recently considered by the Court of Appeal in *R v Free; Ex parte Attorney-General (Qld)* [2020] QCA 58, where it was observed that:

> *"*[66] *A sentence as lenient as that would be regarded as an affront to the community if imposed today."*

[4] In November 2009, the respondent was sentenced to 18 months imprisonment for importing child pornography. And in September 2016, he was again sentenced to imprisonment for a number of offences which included a charge of indecent treatment of a child under the age of 12. It was clearly appropriate for this application to be brought before those sentences were complete.

[5] Since the application was brought, relevant processes were engaged and the respondent has been assessed by three psychiatrists. They confirmed the concerns raised by the respondent's criminal history.

[6] The evidence in the reports from those psychiatrists was acceptable and cogent in a way that established, to a high degree of probability, that the respondent would be a serious danger to the community if he was released in the absence of a Division 3 order. That is, there would be an unacceptable risk that the respondent would commit a serious sexual offence if he was released from custody, or at least if he was released from custody without a supervision order being made.

[7] This evidence established, conclusively, that there is a need for the respondent to receive and respond to intensive psychological therapy if that risk is to be reduced to an acceptable level. It must always be recognised that such risk cannot be and is not required by the Act to be, eliminated altogether.

[8] The functional issue in this application is, therefore, whether an order should be made pursuant to subsection (5)(a) of section 13 or subsection (5)(b) of section 13 of the Act. In this case, that issue is to be resolved by addressing the question as to whether the adequate protection of the community can be achieved if the respondent is released on a supervision order prior to his commencement of the necessary individualised treatment.

[9] In her report dated 31 December 2019, Dr Karen Brown records that she performed a comprehensive analysis of the respondent's criminal history and the materials which had been placed before the Courts by which he had been sentenced. She also reviewed the efforts that the respondent had made towards rehabilitation whilst he was in prison.

[10] These included, most recently, his completion of the High Intensity Sexual Offending Programme. The doctor noted, on page 33 of her report, the respondent's assertion that, following the completion of that programme, he had:

> *"Now changed and more fully understands (and can mitigate against) his risk factors for reoffending."*

[11] However, the doctor also recorded that the respondent failed to acknowledge the core reasons for his offending and, ultimately, when challenged, was at a loss to explain it. The probable diagnosis was of a paedophilic disorder as well as mixed personality disorder with paranoid, narcissistic and antisocial traits. It was also noted, at page 37, that he had failed in the past to engage with community based supervision and his most recent offending occurred just five months after his release in 2015.

[12] Dr Brown concluded that it would be optimal for the respondent to receive individual therapy and that this should commence whilst he was detained in custody, in order to assess his engagement with the process and associated reduction in risk, prior to consideration of his release into the community.

[13] Dr Ness McVie reviewed Dr Brown's report - which was part of the medico-legal brief in this matter, and ran to a total of 1,805 pages - before producing her own report on 20 May 2020.

[14] Dr McVie, too, reviewed the respondent's criminal history and the records of his engagement with treatment programmes whilst in custody. She then interviewed the respondent on 28 and 29 April 2020, canvassing his personal history, substance use, past psychiatric history and psycho-sexual history.

[15] As recorded in Dr McVie's report, the respondent's plans for the future centre on his living with his wife with whom he has been in a relationship since 2001 and who has apparently stood by him notwithstanding his repetitive offending and imprisonment. Indeed, reliance was placed, by the respondent, upon an affidavit from his wife in which she speaks to her awareness of his criminal history and her commitment to helping him.

[16] Applying various risk assessment tools, Dr McVie concluded that there was an above average risk of recidivism for sexual violence and that in spite of having

completed several programmes to address sexual offending, the respondent presents with high treatment needs, particularly in the areas of poor cognitive problem solving skills and deviant sexual interests.

[17] He meets the criteria for alcohol use disorder and for a diagnosis of paedophilia. In sum, the respondent presents as an ongoing high risk of sexual offending, which could be either opportunistic or planned and would most likely involve a female child under the age of 12 years.

[18] Dr McVie acknowledged Dr Brown's recommendation that the respondent should engage in individual therapy and custody prior to being released. However, she identified a risk that the respondent would simply repeat his previous performance in the group work he has already done. For this, he achieved positive comments in programme exit reports. The need now is for intensive therapy with a skilled forensic psychologist. This is necessary to address the respondent's sexual offending, coping style and substance abuse. Such therapy is something which Dr McVie believed could be done effectively in the community.

[19] The proposition that there may be limited utility to intensive psychological therapy whilst the respondent remains in custody was echoed in a further report prepared by Dr Ken Arthur on 29 May 2020. Dr Arthur assessed the respondent in three separate sessions (15 May, 18 May and 23 May 2020), reviewed the materials and acknowledged that predicting the imminence of future offending is difficult.

[20] He concluded that the unmodified risk of sexual recidivism on release was well above average or high. But he, too, identified the risk that if such therapy began whilst the respondent was in custody, it was likely that he would engage in positive impression management and superficially comply with such treatment. This would be of limited benefit.

[21] He opined that psychological therapy would certainly be more beneficial on release, where the respondent will be required to deal with the many frustrations and indignities of being managed under a supervision order. He did not believe that the development of a therapeutic relationship prior to release would have a significant impact on the risk of recidivism, so long as the respondent was released under suitably stringent conditions.

[22] In the light of all this evidence, the Attorney's application for a continuing detention order was not abandoned, but in submissions made to the Court, it was said, on her behalf, that the applicant:

> *"Acknowledges the opinions of Dr McVie and Dr Arthur that individual treatment by a skilled forensic psychologist could be done effectively in the community rather than in a custodial setting prior to release. In conference, Dr Brown also accepts that such treatment can occur in the community."*

[23] It was also said that:

> *"The applicant accepts the opinions of the psychiatrists that the risk can be reduced to a manageable level in the context of compliance with their requirements of a supervision order."*

[24] I have to accept that, in giving the opinions on which the submissions were based, all doctors have reckoned with what appears to me to be a high degree of inconsistency and dissemblance in some of the information that was provided to them by the respondent.

[25] In evidence before me today, Dr Arthur pointed out that some of these inconsistencies may well be inadvertent and merely a reflection of the position that:

> *"All memory is fiction."*

[26] He also pointed out that the self-editing and self-serving element of the respondent's narrative is not unusual amongst the respondent's group of offenders and actually aids in the formulation of the expert's opinions, in that it discloses the coping strategies which will need to be challenged in therapy. In theory, at least, attempts to break down obstacles, such as a denial of sexual deviancy, can be successful, but this cannot be done in group therapy and may take some considerable time.

[27] The conundrum presented by the need to formulate an opinion based upon information that is unlikely to be reliable is one which I apprehend must present in most cases of this nature. It is possible that if one dwelt upon this issue for long enough, one might conclude that it was not really possible to aventure any relevant opinion, in which case the Act would be unworkable.

[28] In order to avoid that possibility, it is necessary for me to acknowledge and rely upon the expertise of those providing the Court with information. And the fact is

that the respondent has been prepared to engage with those who have been charged with the responsibility of examining him.

[29] Although the need for a Division 3 order is not contested, I note that in deciding whether one should be made, subsection (4)(a) of section 13 directs attention to the extent of a prisoner's cooperation in this context.

[30] As presented, therefore, the case is not one like *Attorney-General for the State of Queensland v CBR* [2020] QSC 157, in which there was a demonstrated basis for concern about the respondent's preparedness to engage with individualised treatment, such that it was necessary for his detention to be continued until that could be established. Rather, this respondent can point to extensive engagement in programmes completed whilst in custody, and, indeed, seems to have done as much as he could to demonstrate his willingness in that regard, hence the capacity for the doctors to produce the opinions advanced.

[31] In all of these circumstances, a decision to order that the respondent be detained in custody for an indefinite term would be a decision made against the weight of the evidence provided by the experts. It would also be a decision made contrary to the guidance provided by the Court of Appeal in *Attorney-General for the State of Queensland v Francis* [2006] QCA 324; [2007] 1 QR 396 at 405, where it was written at paragraph 39:

> "[39] *The Act does not contemplate that arrangements to prevent such a risk must be "watertight"; otherwise orders under subsection (5)(b) of section 13 would never be made. The question is whether the protection of the community is adequately ensured. If supervision of the prisoner is apt to ensure adequate protection, having regard to the risk to the community posed by the prisoner, then an order for supervised release should, in principle, be preferred to a continuing detention order on the basis that the intrusions of the Act upon the liberty of the subject are exceptional, and the liberty of the subject should be constrained to no greater extent than is warranted by the statute which authorised such constraint*."

[32] Nevertheless, and whilst there is seemingly a connection between the respondent's offending and some sort of antecedent emotional disturbance, his deviant sexual interest is not understood well. An order pursuant to subsection 5(b) of section 13 is essential.

[33] Attention then turns to the terms of any such order. It is proposed that an order be made for a duration of 10 years. This is not challenged by the respondent. It is appropriate in circumstances where, as explained by Dr Arthur in evidence this morning, a long term strategy is required for the relevant risk to be managed. As the doctor pointed out, child sex offenders present a special challenge in that the risk that they might reoffend persists beyond the point at which it might attenuate in the case of other types of offenders.

[34] Other conditions sought by the applicant were not questioned by the respondent. They are comprehensive. Importantly, they contain, in condition 33, a requirement that the respondent obey any direction given to him about seeing, amongst other professionals, a psychologist.

[35] Again, in evidence today, Dr Arthur expressed the view that the particular therapist proposed was adequately skilled and eminently qualified for this task. This aspect of the order is indispensable and in conjunction with order number 48, is calculated to facilitate the agreed need for the respondent to receive intensive individual psychological therapy.

[36] The future is, as has been noted, difficult to predict, but at present, and given Dr Arthur's evidence about the way in which the respondent's brand of deviancy may persist, it is difficult to contemplate any relaxation of this requirement for the duration of the order. That will, of course, be a matter for those who are administering it.

[37] Both Dr McVie and Dr Arthur also recommended that the respondent's wife and mother should be provided with further education around the respondent's risk factors. It is also noted that the respondent's wife is currently employed in circumstances where she works with young children. There was included in the draft order initially proposed, a requirement that the respondent not attend any school or child care centre or be in a place where there is a children's play area or childminding area. That was clearly appropriate and remains.

[38] In the circumstances, however, more was required. Following exchanges in Court this morning and further consultation between the parties, the order now contains a further condition that the respondent must, upon request, inform Corrective Services

Officers as to the nature of his wife's employment, the places at which she works and whether there has been any change to either of those things, within two business days of the change occurring. Those administering this order should be acutely conscious of this circumstance and the power that the order gives for it to be investigated.

[39] It is also a requirement that the respondent develop a management plan with his psychologist or psychiatrist, to address any risk of reoffending. It is to be hoped, given the observations of the doctors, that any such plan will involve disclosure to and communication with both the respondent's wife and his mother.

[40] Both Drs McVie and Arthur also apprehended the need for the respondent's release to be made, initially, to housing at the Wacol precinct and for strict adherence to the conditions of the order. The Court has received affidavit material which indicates that such accommodation is available and is proposed for an initial three month period subject to review thereafter.

[41] The concern in this regard is raised by Dr Arthur's opinion that the respondent will find the realities of being on a supervision order onerous and may struggle with supervision and resent certain terms of the order. The order does, however, provide Corrective Services staff with broad discretions that might be exercised in order to deal with any such difficulties.

[42] It is to be expected that when enforcing conditions 12 and 13 and related conditions, those responsible for the administration of the order will give full weight to the opinions expressed by those who have assessed the respondent and that he will not be allowed unsupervised access to the community until his treating clinicians and corrections staff are satisfied that he has transitioned successfully from the prison environment.

[43] On that basis, and having being satisfied to the requisite standard that the respondent is a serious danger to the community, I am prepared to order that he be released from prison and must follow the rules in the draft supervision order for a period of 10 years, that is, until 7 July 2030.

[44] The rules are, as I have just indicated, as they appear in the draft which has been provided and agreed upon by both counsel for the Attorney-General and counsel for the respondent. I am prepared to make the order in those terms.

"A"

SUPERVISION ORDER

Before: Justice Callaghan

Date: 8 June 2020

Initiating document: Originating Application filed 27 March 2020 (CFI No. 1)

1. The Court is satisfied that David Leonard Cogdale, is a serious danger to the community. The rules in this order are made according to the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

2. The Court orders that David Leonard Cogdale be released from prison and must follow the rules in this supervision order for 10 years, until 7 July 2030.

TO David Leonard Cogdale:

1. You are being released from prison but only if you obey the rules in this supervision order.
2. If you break any of the rules in this supervision order, the police or Queensland Corrective Services have the power to arrest you. Then the Court might order that you go back to prison.
3. You must obey these rules for the next 10 years.

Reporting

4. On the day you are released from prison, you must report before 4 pm to a corrective services officer at the Community Corrections office closest to where you will live. You must tell the corrective services officer your name and the address where you will live.
5. A corrective services office will tell you the times and dates when you must report to them. You must report to them at the times they tell you to report. A corrective services officer might visit you at your home. You must let the corrective services officer come into your house.

To "report" means to visit a corrective services officer and talk to them face to face.

Supervision

6. A corrective services officer will supervise you until this order is finished. This means you must obey any reasonable direction that a corrective services officer gives you about:
    a) Where you are allowed to live; and
    b) Rehabilitation, care or treatment programs; and
    c) Using drugs and alcohol; and
    d) Who you associate with; and
    e) Anything else, except for instructions that mean you will break the rules in this supervision order.

    A "reasonable direction" is an instruction about what you must do, or what you must not do, that is reasonable in that situation.

    If you are not sure about a direction, you can ask a corrective services officer for more information, or talk to your lawyer about it.
7. You must answer and tell the truth if a corrective services officer asks you about where you are, what you have been doing or what you are planning to do, and who you are spending time with.
8. You must not change your name without first obtaining the written permission of a corrective services officer.
9. If you change your name, where you live or any employment, you must tell a corrective services officer at least two business days before the change will happen.

    A "business day" is a week day (Monday, Tuesday, Wednesday, Thursday and Friday) that is not a public holiday.

No offences

10. You must not break the law by committing a sexual offence.
11. You must not break the law by committing an indictable offence.

Where you must live

12. You must live at a place approved by a corrective services officer. If the place (for example, the contingency precinct) has rules, you must obey any rules that are made about people who live there.
13. You must not live at another place. If you want to live at another place, you must tell a corrective services officer the address of the place you want to live. The corrective services officer will decide if you are allowed to live at that place. You are allowed to change the place you live only when you get written permission from a corrective services officer to live at another place.

    This also means you must get written permission from a corrective services officer before you are allowed to stay overnight, or for a few days, or for a few weeks, at another place.
14. You must not leave Queensland. If you want to leave Queensland, you must ask for written permission from a corrective services officer. You are allowed to leave Queensland only after you get written permission from a corrective services officer.

Curfew direction

15. A corrective services officer has power to tell you to stay at a place (for example, the place you live) at particular times. This is called a curfew direction. You must obey a curfew direction.

Monitoring direction

16. A corrective services officer has power to tell you to:
    a) Wear a device that tracks your location; and
    b) Let them install a device or equipment at the place you live. This will monitor if you are there.

    This is called a monitoring direction. You must obey a monitoring direction.

Employment or study

17. You must get written permission from a corrective services officer before you are allowed to start a job, start studying or start volunteer work.
18. When you ask for permission, you must tell the corrective services officer these things:
    a) What the job is;

b) Who you will work for;

c) What hours you will work each day;

d) The place or places where you will work; and

e) (if it is study) where you want to study and what you want to study.

19. If a corrective services officer tells you to stop working or studying you must obey what they tell you.

Motor vehicles

20. You must tell a corrective services officer the details (make, model, colour and registration number) about any vehicle you own, borrow or hire. You must tell the corrective services officer these details immediately (on the same day) you get the vehicle.

    A vehicle includes a car, motorbike, ute or truck.

Mobile phone

21. You are only allowed to own or have or use (even if you do not own it) one mobile phone. You must tell a corrective services officer the details (make, model, phone number and service provider) about any mobile phone you own or have or use within 24 hours of when you get the phone.

22. You must give a corrective services officer all passwords and passcodes for any mobile phones you own or have or use. You must let a corrective services officer look at the phone and everything on the phone.

Computers and internet

23. You must get written permission from a corrective services officer before you are allowed to use a computer, phone or other device to access the internet.

24. You must give a corrective services officer any password or other access code you know for the computer, phone or other device. You must do this within 24 hours of when you start using the computer, phone or other device. You must let a corrective services officer look at the computer, phone or other device and everything on it.

25. You must give a corrective services officer details (including user names and passwords) about any email address, instant messaging service, chat rooms, or social

networking sites that you use. You must do this within 24 hours of when you start using any of these things.

No contact within any victim

26. You must not contact or try to contact any victim(s) of a sexual offence committed by you. You must not ask someone else to do this for you.
"Contact" means any type of communication, including things like talking, texting, sending letters or emails, posting pictures or chatting. You must not do any of these things in person, by telephone, computer, social media or in any other way.

Rules about alcohol and drugs

27. You are not allowed to take (for example, swallow, eat, inject, or sniff) any alcohol. You are also not allowed to have with you or be in control of any alcohol.
28. You are not allowed to take (for example, swallow, eat, inject, smoke or sniff) any illegal drugs. You are also not allowed to have with you or be in control of any illegal drugs.
29. A corrective services officer has the power to tell you to take a drug test or alcohol test. You must take the drug test or alcohol test when they tell you to. You must give them some of your breath, spit (saliva), pee (urine) or blood when they tell you to do this.
30. You are not allowed to visit any business that has its primary purpose as the supply and service of alcohol. If you want to go to one of these places, you must first get written permission from a corrective services officer. If you do not get written permission, you are not allowed to go.

Rules about medicine

31. You must tell a corrective services officer about any medicine that a doctor prescribes (tells you to buy). You must also tell a corrective services officer about any over the counter medicine that you buy or have with you. You must do this within 24 hours of seeing the doctor or buying the medicine.
32. You must take prescribed medicine only as directed by a doctor. You must not take any medicine (other than over the counter medicine) which has not been prescribed for you by a doctor.

Rules about rehabilitation and counselling

33. You must obey any direction a corrective services officer gives you about seeing a doctor, psychiatrist, psychologist, social worker or other counsellor.
34. You must obey any direction a corrective services officer gives you about participating in any treatment or rehabilitation program.
35. You must let corrective services officers get information about you from anyone who provides treatment to you or from any rehabilitation program.

Speaking to corrective services about what you plan to do

36. Each week, you must talk to a corrective services officer about what you plan to do that week. A corrective services officer will tell you how to do this (for example, face to face or in writing).
37. You must also tell a corrective services officer the name of new persons you have met.

    This includes: people who you spend time with, work with, make friends with, see or speak to (including by using social media or the internet) regularly.
38. You may need to tell new contacts about your supervision order and offending history. The corrective services officer will instruct you to tell those persons and the corrective services officer may speak to them to make sure you have given them all the information.

Contact with children

39. You are not allowed to have any contact with children under 16 years of age. If you want to have supervised or unsupervised contact with a child under 16 years of age you must first get written permission from a corrective services officer. If you do not get written permission, you are not allowed to have contact with the child.

    "Contact" means any type of communication, including things like talking with them face to face, texting, sending letters or emails, posting pictures or chatting, using a telephone, computer, social media or in any other way.

    "Supervised" means having contact with the child while another person is with you and the child.

"Unsupervised" means having contact with the child while there is no other person with you and the child.

40. If you have any repeated contact (that is, more than one time) with a person who you ought reasonably believe to be a parent, guardian or carer of a child under the age of 16, you must:

    a) tell the person(s) about this supervision order; and

    b) tell a corrective services officer the details of the person(s).

    You must do this immediately. This means you have to tell the person, and tell a corrective services officer, on the same day you have contact with the person.

41. Queensland Corrective Services has power to give information about you, and about this supervision order, to any parent, guardian or caregivers that you have contact with.

42. Queensland Corrective Services also has power to give information about you, and about this supervision order, to an external agency (such as the Department of Child Safety).

43. You must not:

    a) attend any school or childcare centre;

    b) be in a place where there is a children's play area or child minding area;

    c) go to a public park;

    d) go to a shopping centre;

    e) join any club or organisation in which children are involved;

    f) participate in any club or organisation in which children are involved.

    If you want to do any of these things, you must first get written permission from a corrective services officer. If you do not get written permission, you cannot do any of these things.

Other specific conditions

44. You must not collect photos/ videos/ magazines which have images of children in them without prior approval of a corrective services officer.
    If you have any you may be asked to get rid of them by a corrective services officer.

45. You are not to get child exploitation material or images of children on a computer or phone from the internet.

46. You cannot get pornographic images on a computer or phone from the internet or magazines without written approval from a corrective services officer. Your treating psychologist will provide advice regarding this approval.
47. Upon request, you must inform a corrective services officer of:
    a) the nature of your wife's employment;
    b) the place or places at which your wife works;
    c) whether there has been any change to either (a) or (b) within two business days of the change occurring.
48. You must develop a management plan with your psychologist or psychiatrist to address any risk of sexual re-offence. You must talk about this with a corrective services officer when asked and provide a copy of the management plan as directed by a corrective services officer.
49. You must advise your case manager of any personal relationships you have started.